reach reasonable and expeditious results.'', and in third sentence substituted ''published nondramatic musical works and published pictorial, graphic, and sculptural works'' for ''works specified by this subsection''.

Subsec. (b)(1). Pub. L. 103–198, §4(1)(C), struck out '', within one hundred and twenty days after publication of the notice specified in this subsection,'' after ''broadcasting entity may'' and substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal'' wherever appearing.

Subsec. (b)(2). Pub. L. 103–198, §4(1)(D), substituted ''Librarian of Congress'' for ''Tribunal''.

Subsec. (b)(3). Pub. L. 103–198, §4(1)(E)(ii), (iii), in second sentence, substituted ''copyright arbitration royalty panel'' for ''Copyright Royalty Tribunal'' and ''paragraph (2)'' for ''clause (2) of this subsection'', and in last sentence, substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal''.

Pub. L. 103–198, §4(1)(E)(i), substituted first sentence for former first sentence which read as follows: ''Within six months, but not earlier than one hundred and twenty days, from the date of publication of the notice specified in this subsection the Copyright Royalty Tribunal shall make a determination and publish in the Federal Register a schedule of rates and terms which, subject to clause (2) of this subsection, shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether or not such copyright owners and public broadcasting entities have submitted proposals to the Tribunal.''

Subsec. (b)(4). Pub. L. 103–198, §4(1)(F), struck out par. (4) which read as follows: ''With respect to the period beginning on the effective date of this title and ending on the date of publication of such rates and terms, this title shall not afford to owners of copyright or public broadcasting entities any greater or lesser rights with respect to the activities specified in subsection (d) as applied to works specified in this subsection than those afforded under the law in effect on December 31, 1977, as held applicable and construed by a court in an action brought under this title.''

Subsec. (c). Pub. L. 103–198, §4(2), substituted ''1997'' for ''1982'' and ''Librarian of Congress'' for ''Copyright Royalty Tribunal''.

Subsec. (d). Pub. L. 103–198, §4(3), in introductory provisions, struck out ''to the transitional provisions of subsection (b)(4), and'' after ''Subject'' and substituted ''a copyright arbitration royalty panel'' for ''the Copyright Royalty Tribunal'', and in pars. (2) and (3), substituted ''paragraph'' for ''clause'' wherever appearing.

Subsec. (g). Pub. L. 103–198, §4(4), substituted ''paragraph'' for ''clause''.

EFFECTIVE DATE

Section effective Oct. 19, 1976, see section 102 of Pub. L. 94–553, set out as a note preceding section 101 of this title.

CROSS REFERENCES

Determinations as to reasonable terms and rates of royalty payments by Copyright Royalty Tribunal, see section 801 of this title.

Exclusive rights in copyrighted work, see section 106 of this title.

Institution and conclusion of proceedings concerning the determination of reasonable terms and rates of royalty payments, see section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 114, 501, 504, 511, 801, 802, 803 of this title; title 18 section 2319.

§ 119. Limitations on exclusive rights: Secondary transmissions of superstations and network stations for private home viewing

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) SUPERSTATIONS.—Subject to the provisions of paragraphs (3), (4), and (6) of this subsection and section 114(d), secondary transmissions of a primary transmission made by a superstation and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for each retransmission service to each household receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public for private home viewing.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraphs (B) and (C) of this paragraph and paragraphs (3), (4), (5), and (6) of this subsection and section 114(d), secondary transmissions of programming contained in a primary transmission made by a network station and embodying a performance or display of a work shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, and the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission.

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions to persons who reside in unserved households.

(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and street address, including county and zip code) all subscribers to which the satellite carrier currently makes secondary transmissions of that primary transmission. Thereafter, on the 15th of each month, the satellite carrier shall submit to the network a list identifying (by name and street address, including county and zip code) any persons who have been added or dropped as such subscribers since the last submission under this subparagraph. Such subscriber information submitted by a satellite carrier may be used only for purposes of monitoring compliance by the satellite carrier with this subsection. The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to whom the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willful

or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

(4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

(5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who does not reside in an unserved household is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506 and 509, except that—

(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

(ii) any statutory damages shall not exceed $5 for such subscriber for each month during which the violation occurred.

(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who do not reside in unserved households, then in addition to the remedies set forth in subparagraph (A)—

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary transmission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed $250,000 for each 6-month period during which the pattern or practice was carried out.

(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before the date of the enactment of this section.

(D) BURDEN OF PROOF.—In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household.

(6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a superstation or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and 509, if the satellite carrier unlawfully discriminates against a distributor.

(7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

(8) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—

(A) IN GENERAL.—Subject to subparagraph (C), upon a challenge by a network station regarding whether a subscriber is an unserved household within the predicted Grade B Contour of the station, the satellite carrier shall, within 60 days after the receipt of the challenge—

(i) terminate service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

(ii) conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the network station of the satellite carrier's intent to conduct the measurement.

(B) EFFECT OF MEASUREMENT.—If the satellite carrier conducts a signal intensity measurement under subparagraph (A) and the measurement indicates that—

(i) the household is not an unserved household, the satellite carrier shall, with-

in 60 days after the measurement is conducted, terminate the service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or

(ii) the household is an unserved household, the station challenging the service shall reimburse the satellite carrier for the costs of the signal measurement within 60 days after receipt of the measurement results and a statement of the costs of the measurement.

(C) LIMITATION ON MEASUREMENTS.—(i) Notwithstanding subparagraph (A), a satellite carrier may not be required to conduct signal intensity measurements during any calendar year in excess of 5 percent of the number of subscribers within the network station's local market that have subscribed to the service as of the effective date of the Satellite Home Viewer Act of 1994.

(ii) If a network station challenges whether a subscriber is an unserved household in excess of 5 percent of the subscribers within the network's station local market within a calendar year, subparagraph (A) shall not apply to challenges in excess of such 5 percent, but the station may conduct its own signal intensity measurement of the subscriber's household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement. If such measurement indicates that the household is not an unserved household, the carrier shall, within 60 days after receipt of the measurement, terminate service to the household of the signal that is the subject of the challenge and within 30 days thereafter notify the network station that made the challenge that service has been terminated. The carrier shall also, within 60 days after receipt of the measurement and a statement of the costs of the measurement, reimburse the network station for the cost it incurred in conducting the measurement.

(D) OUTSIDE THE PREDICTED GRADE B CONTOUR.—(i) If a network station challenges whether a subscriber is an unserved household outside the predicted Grade B Contour of the station, the station may conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement.

(ii) If the network station conducts a signal intensity measurement under clause (i) and the measurement indicates that—

(I) the household is not an unserved household, the station shall forward the results to the satellite carrier who shall, within 60 days after receipt of the measurement, terminate the service to the household of the signal that is the subject of the challenge, and shall reimburse the station for the costs of the measurement within 60 days after receipt of the measurement results and a statement of such costs; or

(II) the household is an unserved household, the station shall pay the costs of the measurement.

(9) LOSER PAYS FOR SIGNAL INTENSITY MEASUREMENT; RECOVERY OF MEASUREMENT COSTS IN A CIVIL ACTION.—In any civil action filed relating to the eligibility of subscribing households as unserved households—

(A) a network station challenging such eligibility shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the satellite carrier for any signal intensity measurement that is conducted by that carrier in response to a challenge by the network station and that establishes the household is an unserved household; and

(B) a satellite carrier shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the network station challenging such eligibility for any signal intensity measurement that is conducted by that station and that establishes the household is not an unserved household.

(10) INABILITY TO CONDUCT MEASUREMENT.—If a network station makes a reasonable attempt to conduct a site measurement of its signal at a subscriber's household and is denied access for the purpose of conducting the measurement, and is otherwise unable to conduct a measurement, the satellite carrier shall within 60 days notice thereof, terminate service of the station's network to that household.

(b) STATUTORY LICENSE FOR SECONDARY TRANSMISSIONS FOR PRIVATE HOME VIEWING.—

(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all superstations and network stations whose signals were transmitted, at any time during that period, to subscribers for private home viewing as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such transmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation; and

(B) a royalty fee for that 6-month period, computed by—

(i) multiplying the total number of subscribers receiving each secondary transmission of a superstation during each calendar month by 17.5 cents per subscriber in the case of superstations not subject to syndicated exclusivity under the regulations of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations subject to such syndicated exclusivity;

(ii) multiplying the number of subscribers receiving each secondary transmission of a network station during each calendar month by 6 cents; and

(iii) adding together the totals computed under clauses (i) and (ii).

(2) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (4)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title.

(3) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (2) shall, in accordance with the procedures provided by paragraph (4), be distributed to those copyright owners whose works were included in a secondary transmission for private home viewing made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Librarian of Congress under paragraph (4).

(4) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (2) shall be distributed in accordance with the following procedures:

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions for private home viewing shall file a claim with the Librarian of Congress, in accordance with requirements that the Librarian of Congress shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Librarian of Congress shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Librarian of Congress determines that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Librarian of Congress finds the existence of a controversy, the Librarian of Congress shall, pursuant to chapter 8 of this title, convene a copyright arbitration royalty panel to determine the distribution of royalty fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Librarian of Congress shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have discretion to proceed to distribute any amounts that are not in controversy.

(c) ADJUSTMENT OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES.—The rate of the royalty fee payable under subsection (b)(1)(B) shall be effective until[1] unless a royalty fee is established under paragraph (2), (3), or (4) of this subsection. After that date, the fee shall be determined either in accordance with the voluntary negotiation procedure specified in paragraph (2) or in accordance with the compulsory arbitration procedure specified in paragraphs (3) and (4).

(2) FEE SET BY VOLUNTARY NEGOTIATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before July 1, 1996, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers under subsection (b)(1)(B).

(B) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or voluntary agreements for the payment of royalty fees. Any such satellite carriers, distributors, and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Librarian of Congress shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the entire cost thereof.

(C) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

(D) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Office in accordance with this paragraph shall become effective on the date specified in the agreement, and shall remain in effect until December 31, 1999, or in accordance with the terms of the agreement, whichever is later.

(3) FEE SET BY COMPULSORY ARBITRATION.—

(A) NOTICE OF INITIATION OF PROCEEDINGS.—On or before January 1, 1997, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of arbitration proceedings for the purpose of determining a reasonable royalty fee to be paid under subsection (b)(1)(B) by satellite carriers who are not parties to a voluntary agreement filed with the Copyright Office in accordance with paragraph (2). Such arbitration proceeding shall be conducted under chapter 8.

[1] So in original. The word ''until'' probably should not appear.

(B)[2] FACTORS FOR DETERMINING ROYALTY FEES.—In determining royalty fees under this paragraph, the copyright arbitration royalty panel appointed under chapter 8 shall consider the approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station, the fee established under any voluntary agreement filed with the Copyright Office in accordance with paragraph (2), and the last fee proposed by the parties, before proceedings under this paragraph, for the secondary transmission of superstations or network stations for private home viewing. The fee shall also be calculated to achieve the following objectives:

(i) To maximize the availability of creative works to the public.

(ii) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

(iii) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

(iv) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

(C) PERIOD DURING WHICH DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN EFFECTIVE.—The obligation to pay the royalty fee established under a determination which—

(i) is made by a copyright arbitration royalty panel in an arbitration proceeding under this paragraph and is adopted by the Librarian of Congress under section 802(f), or

(ii) is established by the Librarian of Congress under section 802(f),

shall become effective as provided in section 802(g) or July 1, 1997, whichever is later.

(D)[2] ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the Copyright Arbitration Panel shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the Panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

(i) the competitive environment in which such programming is distributed, the cost for similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

(ii) the economic impact of such fees on copyright owners and satellite carriers; and

(iii) the impact on the continued availability of secondary transmissions to the public.

(d) DEFINITIONS.—As used in this section—

(1) DISTRIBUTOR.—The term ''distributor'' means an entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers for private home viewing or indirectly through other program distribution entities.

(2) NETWORK STATION.—The term ''network station'' means—

(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934).

(3) PRIMARY NETWORK STATION.—The term ''primary network station'' means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

(4) PRIMARY TRANSMISSION.—The term ''primary transmission'' has the meaning given that term in section 111(f) of this title.

(5) PRIVATE HOME VIEWING.—The term ''private home viewing'' means the viewing, for private use in a household by means of satellite reception equipment which is operated by an individual in that household and which serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

(6) SATELLITE CARRIER.—The term ''satellite carrier'' means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing.

(7) SECONDARY TRANSMISSION.—The term ''secondary transmission'' has the meaning given that term in section 111(f) of this title.

(8) SUBSCRIBER.—The term ''subscriber'' means an individual who receives a secondary

[2] See 1994 Amendment note for subsec. (c)(3)(D) below.

transmission service for private home viewing by means of a secondary transmission from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(9) SUPERSTATION.—The term ''superstation'' means a television broadcast station, other than a network station, licensed by the Federal Communications Commission that is secondarily transmitted by a satellite carrier.

(10) UNSERVED HOUSEHOLD.—The term ''unserved household'', with respect to a particular television network, means a household that—

(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network, and

(B) has not, within 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carrier of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network.

(11) LOCAL MARKET.—The term ''local market'' means the area encompassed within a network station's predicted Grade B contour as that contour is defined by the Federal Communications Commission.

(e) EXCLUSIVITY OF THIS SECTION WITH RESPECT TO SECONDARY TRANSMISSIONS OF BROADCAST STATIONS BY SATELLITE TO MEMBERS OF THE PUBLIC.—No provision of section 111 of this title or any other law (other than this section) shall be construed to contain any authorization, exemption, or license through which secondary transmissions by satellite carrier for private home viewing of programming contained in a primary transmission made by a superstation or a network station may be made without obtaining the consent of the copyright owner.

(Added Pub. L. 100–667, title II, §202(2), Nov. 16, 1988, 102 Stat. 3949; amended Pub. L. 103–198, §5, Dec. 17, 1993, 107 Stat. 2310; Pub. L. 103–369, §2, Oct. 18, 1994, 108 Stat. 3477; Pub. L. 104–39, §5(c), Nov. 1, 1995, 109 Stat. 348.)

TERMINATION OF SECTION

For termination of section by section 4(a) of Pub. L. 103–369, see Termination of Section note below.

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (a)(5)(C), is the date of enactment of Pub. L. 100–667, which was approved Nov. 16, 1988.

For effective date of the Satellite Home Viewer Act of 1994, referred to in subsec. (a)(8)(C)(i), see section 6 of Pub. L. 103–369, set out as an Effective and Termination Dates of 1994 Amendment note below.

The Communications Act of 1934, referred to in subsec. (d)(6), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. Section 397 of the Act is classified to section 397 of Title 47. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

AMENDMENTS

1995—Subsec. (a)(1), (2)(A). Pub. L. 104–39 inserted ''and section 114(d)'' after ''of this subsection''.

1994—Subsec. (a)(2)(C). Pub. L. 103–369, §2(1), struck out ''90 days after the effective date of the Satellite Home Viewer Act of 1988, or'' before ''90 days after commencing'', ''whichever is later,'' before ''submit to the network that owns'', and '', on or after the effective date of the Satellite Home Viewer Act of 1988,'' after ''Register of Copyrights'', and inserted ''name and'' after ''identifying (by'' in two places.

Subsec. (a)(5)(C). Pub. L. 103–369, §2(5)(A), substituted ''this section'' for ''the Satellite Home Viewer Act of 1988''.

Subsec. (a)(5)(D). Pub. L. 103–369, §2(2), added subpar. (D).

Subsec. (a)(8) to (10). Pub. L. 103–369, §2(5)(B), added pars. (8) to (10).

Subsec. (b)(1)(B). Pub. L. 103–369, §2(3), in cl. (i), substituted ''17.5 cents per subscriber in the case of superstations not subject to syndicated exclusivity under the regulations of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations subject to such syndicated exclusivity'' for ''12 cents'', and in cl. (ii), substituted ''6 cents'' for ''3 cents''.

Subsec. (c)(1). Pub. L. 103–369, §2(4)(A), struck out ''December 31, 1992,'' after ''until''.

Subsec. (c)(2)(A). Pub. L. 103–369, §2(4)(B)(i), substituted ''July 1, 1996'' for ''July 1, 1991''.

Subsec. (c)(2)(D). Pub. L. 103–369, §2(4)(B)(ii), substituted ''December 31, 1999, or in accordance with the terms of the agreement, whichever is later'' for ''December 31, 1994''.

Subsec. (c)(3)(A). Pub. L. 103–369, §2(4)(C)(i), substituted ''January 1, 1997'' for ''December 31, 1991''.

Subsec. (c)(3)(C). Pub. L. 103–369, §2(4)(C)(iv)(II), inserted before period at end ''or July 1, 1997, whichever is later''.

Pub. L. 103–369, §2(4)(C)(iv)(I), which directed the amendment of subpar. (C) by striking out '', or until December 31, 1994'', could not be executed because phrase to be struck out does not appear in text.

Subsec. (c)(3)(D). Pub. L. 103–369, §2(4)(C)(ii), amended subpar. (D) generally, without regard to the prior redesignation of subpar. (D) as (B) by Pub. L. 103–198, §5(2)(C)(ii), (iii). See 1993 Amendment note below. Prior to amendment, subpar. (D) read as follows:

''(D) PERSONS SUBJECT TO ROYALTY FEE.—The royalty fee referred to in subparagraph (C) shall be binding on all satellite carriers, distributors, and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under paragraph (2).''

Subsec. (c)(3)(E). Pub. L. 103–369, §2(4)(C)(iii), which directed the amendment of subpar. (E) by substituting ''180'' for ''60'', could not be executed because subpar. (E) was repealed by Pub. L. 103–198, §5(2)(C)(iv). See 1993 Amendment note below.

Subsec. (d)(2). Pub. L. 103–369, §2(6)(A), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) NETWORK STATION.—The term 'network station' has the meaning given that term in section 111(f) of this title, and includes any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station.''

Subsec. (d)(6). Pub. L. 103–369, §2(6)(B), inserted ''and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations'' after ''Federal Communications Commission''.

Subsec. (d)(11). Pub. L. 103–369, §2(6)(C), added par. (11).

1993—Subsec. (b)(1). Pub. L. 103–198, §5(1)(A), struck out '', after consultation with the Copyright Royalty Tribunal,'' in introductory provisions after ''Register shall'' and in subpar. (A) after ''Copyrights may''.

Subsec. (b)(2), (3). Pub. L. 103–198, § 5(1)(B), (C), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal''.

Subsec. (b)(4). Pub. L. 103–198, § 5(1)(D), in subpar. (A), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal'' after ''claim with the'' and for ''Tribunal'' after ''requirements that the'', in subpar. (B), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal'' before ''shall determine'' and for ''Tribunal'' wherever else appearing, and substituted ''convene a copyright arbitration royalty panel'' for ''conduct a proceeding'', and in subpar. (C), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal''.

Subsec. (c). Pub. L. 103–198, § 5(2)(A), substituted ''Adjustment'' for ''Determination'' in heading.

Subsec. (c)(2). Pub. L. 103–198, § 5(2)(B), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal'' in subpars. (A) and (B).

Subsec. (c)(3)(A). Pub. L. 103–198, § 5(2)(C)(i), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal'' and substituted last sentence for former last sentence which read as follows: ''Such notice shall include the names and qualifications of potential arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select.''

Subsec. (c)(3)(B). Pub. L. 103–198, § 5(2)(C)(ii), (iii), redesignated subpar. (D) as (B), substituted ''copyright arbitration royalty panel appointed under chapter 8'' for ''Arbitration Panel'' in introductory provisions, and struck out former subpar. (B) which provided for the selection of an Arbitration Panel.

Subsec. (c)(3)(C). Pub. L. 103–198, § 5(2)(C)(ii), (v), redesignated subpar. (G) as (C), amended subpar. generally, substituting provisions relating to period during which decision of arbitration panel or order of Librarian of Congress becomes effective for provisions relating to period during which decision of Arbitration Panel or order of Copyright Royalty Tribunal became effective, and struck out former subpar. (C) which related to proceedings in arbitration.

Subsec. (c)(3)(D). Pub. L. 103–198, § 5(2)(C)(vi), redesignated subpar. (H) as (D) and substituted ''referred to in subparagraph (C)'' for ''adopted or ordered under subparagraph (F)''. Former subpar. (D) redesignated (B).

Subsec. (c)(3)(E) to (H). Pub. L. 103–198, § 5(2)(C)(iv)–(vi)(I), struck out subpar. (E) which required the Arbitration Panel to report to the Copyright Royalty Tribunal not later than 60 days after publication of notice initiating an arbitration proceeding, struck out subpar. (F) which required action by the Tribunal within 60 days after receiving the report by the Panel, and redesignated subpars. (G) and (H) as (C) and (D), respectively.

Subsec. (c)(4). Pub. L. 103–198, § 5(2)(D), struck out par. (4) which established procedures for judicial review of decisions of the Copyright Royalty Tribunal.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104–39, set out as a note under section 101 of this title.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Section 6 of Pub. L. 103–369 provided that:

''(a) IN GENERAL.—Except as provided in subsections (b) and (d), this Act [amending this section and section 111 of this title, enacting provisions set out as notes under this section and section 101 of this title, and repealing provisions set out as a note under this section] and the amendments made by this Act take effect on the date of the enactment of this Act [Oct. 18, 1994].

''(b) BURDEN OF PROOF PROVISIONS.—The provisions of section 119(a)(5)(D) of title 17, United States Code (as added by section 2(2) of this Act) relating to the burden of proof of satellite carriers, shall take effect on January 1, 1997, with respect to civil actions relating to the eligibility of subscribers who subscribed to service as an unserved household before the date of the enactment of this Act.

''(c) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—The provisions of section 119(a)(8) of title 17, United States Code (as added by section 2(5) of this Act), relating to transitional signal intensity measurements, shall cease to be effective on December 31, 1996.

''(d) LOCAL SERVICE AREA OF A PRIMARY TRANSMITTER.—The amendment made by section 3(b) [amending section 111 of this title], relating to the definition of the local service area of a primary transmitter, shall take effect on July 1, 1994.''

EFFECTIVE DATE

Section 206 of title II of Pub. L. 100–667 provided that: ''This title and the amendments made by this title [enacting this section and sections 612 and 613 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, amending sections 111, 501, 801, and 804 of this title and section 605 of Title 47, and enacting provisions set out as notes under this section and section 101 of this title] take effect on January 1, 1989, except that the authority of the Register of Copyrights to issue regulations pursuant to section 119(b)(1) of title 17, United States Code, as added by section 202 of this Act, takes effect on the date of the enactment of this Act [Nov. 16, 1988].''

Section 207 of title II of Pub. L. 100–667 provided that this title and the amendments made by this title (other than the amendments made by section 205 [amending section 605 of Title 47]) cease to be effective on Dec. 31, 1994, prior to repeal by Pub. L. 103–369, § 4(b), Oct. 18, 1994, 108 Stat. 3481.

TERMINATION OF SECTION

Section 4(a) of Pub. L. 103–369 provided that: ''Section 119 of title 17, United States Code, as amended by section 2 of this Act, ceases to be effective on December 31, 1999.''

APPLICABILITY OF 1994 AMENDMENT

Section 5 of Pub. L. 103–369 provided that: ''The amendments made by this section apply only to section 119 of title 17, United States Code.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 111, 501, 511, 801, 802, 803 of this title; title 18 section 2319; title 47 sections 325, 548.

§ 120. Scope of exclusive rights in architectural works

(a) PICTORIAL REPRESENTATIONS PERMITTED.—The copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.

(b) ALTERATIONS TO AND DESTRUCTION OF BUILDINGS.—Notwithstanding the provisions of section 106(2), the owners of a building embodying an architectural work may, without the consent of the author or copyright owner of the architectural work, make or authorize the making of alterations to such building, and destroy or authorize the destruction of such building.

(Added Pub. L. 101–650, title VII, § 704(a), Dec. 1, 1990, 104 Stat. 5133.)

EFFECTIVE DATE

Section applicable to any architectural work created on or after Dec. 1, 1990, and any architectural work,